IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 353 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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JIGNESH HARESHKUMAR TRIVEDI PROP. RIDHDHI GRAPHICS

Versus

STATE OF GUJARAT

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Appearance:

1. Criminal Revision Application No. 353 of 2001

MR JV JAPEE for Petitioner No. 1-2

MR BY MANKAD -PUBLICUTOR for Respondent No. 1

..... for Respondent No. 2

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CORAM : MR.JUSTICE J.R.VORA

Date of decision: 03/09/2001

ORAL JUDGEMENT

#. Heard learned advocate Mr.J.V. Japee, for the applicant. This revision is filed against the order passed by the learned Magistrate allowing the prosecution to ask question in re-examination of a witness for the

purpose of removing the ambiguity. The order is dated 19.7.2001.

#. The case pertains to the Negotiable Instruments Act under Section 138 wherein complainant was examined in his examination in chief by the learned advocate for the complainant, thereafter the accused -present petitioner also carried out examination in cross of the complainant. When the examination in cross was over, on behalf of the prosecution a question was declared before the Court that for removing the ambiguity in the evidence the prosecution intends to ask a question to the witness. The question which is intended to be put by the prosecution to the witness is recorded by the learned Magistrate on 29.6.2001 below the deposition of the complainant. The accused side objected for putting this question to the complainant in re-examination on the ground that there is no ambiguity and only because of filling up the lacuna in the prosecution case the question is being put to the witness. The learned magistrate vide his order impugned on 19.7.2001 decided that the question which is intended to be put to witness can be permitted in re-examination of the witness for the clearance of ambiguity in the cross-examination of the witness. The learned Magistrate has relied upon the decision of Supreme Court in the matter of Rammi alias Rameshwar vs. State of Madhya Pradesh as reported in 1999 SC p.3544.

#. At this stage, the order passed by the learned Magistrate appears to be at the interlocutory stage against which interference in the revisional jurisdiction is not required. However, the anxiety of the learned advocate of the petitioner is that the order impugned passed by the learned Magistrate widens the scope of the re-examination of the witnesses as to include all the lacuna which has been kept by the prosecution in the evidence. However, according to law the scope of re-examination cannot be wider then as permitted by the learned Magistrate with reference to the particular question which is permitted to be put by the prosecution in this case. Meaning thereby, the order impugned undoubtedly is in respect of the question which is recorded by the learned Magistrate below deposition of the complainant and that question only is permitted to be put up before the witness by the learned Magistrate. However, the order passed by the learned Magistrate cannot be stretched beyond this and if any other question in re-examination is proposed to be put by the prosecution to the complainant then naturally it will have to be disclosed before the Court and Court will

decide on its own merits whether that particular question can be put to the witness in re-examination. Therefore, the order which is impugned cannot be said to be so wide as to include as many question as may be put by the prosecution. The scope of the order is only permitting a question to be asked to the witness which is recorded by the Magistrate and not beyond that.

#. Needless it is to say that on reply of the witness to the question which is permitted by the learned Magistrate the accused will be entitled to cross-examination of the complainant and the learned Magistrate shall grant that right to the accused and if prosecution intends further question to be put to the witness other then the question recorded in the deposition by the learned Magistrate in re-examination then the learned Magistrate after hearing the complainant and the accused as well, shall decide on merits whether the question is proper which can be asked in re-examination by the prosecution and if the learned Magistrate comes to the conclusion that the particular question is proper which can be asked to the witness in re-examination then he shall also permit cross-examination by the accused.

#. With the above said order this Revision Application stands dismissed.

( J. R. VORA, J. )

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